IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 25 of 1992
With
FIRST APPEAL No. 31 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMJIBHAI RAVJIBHAI SATHWARA & 2 - Appellant(s)
Versus
GAURIBEN WD/O.NANJIBHAI GOKALDAS THAKKAR & 9 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 3.
MR DK ACHARYA for Respondents : 1 - 8, 10,
- for Defendant(s) : 9,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/09/2007

ORAL JUDGMENT

1. The driver, owner and the Insurance Company of

the offending vehicle [tanker] No. GTX 5761, being aggrieved by the award dated 18.4.1991, passed by the Motor Accident Claims Tribunal [Main], Banaskantha at Palanpur in Motor Accident Claims Petition No. 113 of 1985, are before this Court with a submission that the Tribunal erred in awarding a sum of Rs. 1,77,000/- to the claimants with interest thereon at the rate of 12% per annum.

2. It is to be noted that the claimants have also filed First Appeal No. 31 of 1992 for the purpose of enhancement.

3. The short facts necessary for disposal of the present appeals are that the deceased Nanjimal Gokaldas Thakkar was travelling in truck No. GTF 3610, the truck was stopped on the side road and the deceased alighted from the truck to urinate. At that point of time, a tanker tried to overtake the stationery truck from the wrong side and in the said process, overrun the deceased, the deceased died instantaneously. The claimants thereafter filed Claim Petition claiming a sum of Rs. 3.00 lakhs.

4. The driver, owner and the Insurance Company, after receiving the notices, appeared in the Court and submitted that the deceased was dangerously, without taking any care and caution was on the road and as he himself was negligent, the claimants were not entitled to any amount. After recording the evidence and hearing the parties, the learned Tribunal held that the driver of the tanker was 100% responsible in causing the accident as he was absolutely rash and negligent. It held the income of the deceased to be Rs.12,000/- per year and dependency was calculated at Rs. 8,000/- per year. After applying the multiplier of 20, the Tribunal awarded a sum of Rs. 1,60,000/- under the head of loss of earning/dependency and also awarded certain other amounts. Shri Rajni Mehta, learned counsel for the appellants submitted that joint appeal at the instance of the driver, owner and the Insurance Company may not be maintainable, therefore, name of the appellant no.3 be deleted. The prayer is accordingly allowed and name of the appellant

no.3 is directed to be deleted. The office shall make necessary amendment in the cause title within ten days.

5. Shri Mehta, learned counsel for the appellants, after taking me through the evidence, submitted that the Tribunal was unjustified in holding that the driver of the tanker was rash and negligent. However, after going through the evidence available on the records and the findings recorded by the Tribunal with which I am in general agreement, and also after taking into consideration the panchnama of the spot and other evidence, I must hold that the Tribunal was not unjustified in holding the driver of the tanker author of the accident.

6. It was contended by Shri Acharya, learned counsel for the respondents that from the Income-tax return of the deceased, it would appear that he had filed return of net profit of Rs. 24,429/-, therefore, the Tribunal was unjustified in holding the income to be Rs. 1,000/- month or Rs. 12,000/- per year. He submitted that in view of the Income-tax return,

the Tribunal was obliged to hold that yearly income of the deceased was Rs. 24,000/- or more. Shri Mehta, learned counsel for the appellants in First Appeal No. 25 of 1992 and for the respondents in First Appeal No. 31 of 1992 submitted that from the records, it would clearly appear that the deceased, during his life time never filed his Income-tax return nor did he state before any authority that apart from being a dealer in kerosene, he was also engaged in any other business. He submitted that to create and concoct the evidence that income of the deceased was Rs. 24,000/- or more, such return was filed.

7. From the evidence, it does not appear that the deceased was ever having any cloth business. It also does not appear that prior to the present Income-tax return, the deceased ever filed Income-tax return. Even Panchayat records were not produced before the Tribunal to show that the deceased was engaged in the cloth business. Nothing has also been brought on the records to prove that the business in the name and style of

"Shri Ram Cloth Stores" was owned by the deceased. In the cross-examination, the witnesses for the claimants could not assign any reason as to why Income-tax returns were not filed prior to the Income-tax return which was filed for Samvat Year 2040. The Tribunal, after appreciating the evidence and also after taking into consideration the conduct of the parties, held that the accounts were written subsequent to the death of the deceased and the evidence in relation to cloth business was not reliable. After going through the evidence, I am unable to hold that the Tribunal wrongly held the income to be Rs.12,000/- per year. In fact, the Tribunal was justified in holding that the Income-tax return was filed for the first time to create evidence and there was no evidence available on the records to prove that the business of cloth run in the name and style of "Shri Ram Cloth Stores" was owned by the deceased. The Tribunal was justified in holding yearly income to be Rs.12,000/-. Out of the said amount of Rs. 12,000/- the Tribunal, in the

opinion of this Court, was unjustified in deducting 1/3rd or Rs.4,000/- per year towards personal expenses of the deceased. It is to be seen that the deceased was maintaining a family of 11 persons which included his own self. When the family consists of more members, then, it would always be desirable to hold that the deceased was not taking lion's share but was giving appropriate succour and bread to the family. In the present case, I would deduct a sum of Rs.2,000/- only towards personal expenses of the deceased and would hold that the yearly dependency was Rs.10,000/-. Shri Mehta, learned counsel for the driver and the owner submitted that the Tribunal could not apply multiplier of 20 looking to the age of the deceased.

8. In view of the recent judgment of the Supreme Court, I must concede to the argument raised by Shri Rajni Mehta and would be justified in holding that the Tribunal could not apply multiplier of 20 in case of death of a person who was between 40 to 45 years of age; however multiplier of 13 would be reasonable.

9. I accordingly hold that the claimants would be entitled to a sum of Rs.1,30,000/- under the head of dependency. So far as other amounts totalling to Rs.17,000/- are concerned, this Court is not required to interfere in the matter. I accordingly hold that the claimants would be entitled to a sum of Rs. 1,47,000/- and the liability of the appellants stands reduced from Rs. 1,77,000/- to Rs. 1,47,000/- only.

10. If the Insurance Company has paid the entire awarded amount with interest at the rate of 12% per annum as awarded by the Tribunal, then, in view of the reduced liability of the appellants, the Insurance Company would also be entitled to recover the additional amount paid by them with 12% interest from the date of the deposit up to the date of realization.

11. Both the appeals are disposed of accordingly. No costs.

[R.S. GARG, J.]

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